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23 UNITED STATES DISTRICT COURT

24 DISTRICT OF NEVADA

25 QUIXTAR INC.,

26 Case No. 3:07-cv-00505

27 Plaintiff,

28 **SECOND AMENDED PROTECTIVE
ORDER**

v.

29 SIGNATURE MANAGEMENT TEAM, LLC
30 d/b/a TEAM,

31 Defendant.

32 Certain materials produced by the parties during discovery may be so highly
33 confidential and competitively sensitive that it is necessary to restrict disclosure and use of such
34 materials as among the parties and/or their counsel as well as with respect to third parties.

35 IT IS HEREBY ORDERED, all documents and information produced in this case are
36 subject to the following protections:

1 **I. SCOPE:**

2 A. This Protective Order shall apply to all information, documents and things
 3 within the scope of discovery of this action that are in the custody or possession of the Parties
 4 which is properly designated as "Confidential Material" pursuant to the following provisions by
 5 the Party producing the information including, but not limited to, documents and things
 6 responsive to requests for production of documents, responses to written interrogatories,
 7 responses to requests for admission, testimony adduced at depositions, and hearing or trial
 8 transcripts.

9 The Parties shall label or mark documents and things that constitute or contain
 10 Confidential Material with the legend "CONFIDENTIAL MATERIAL" or
 11 "CONFIDENTIAL". Documents and things that constitute or contain Confidential Material
 12 shall be labeled or marked with the appropriate legend when the document or thing is produced
 13 to the Party or Parties seeking discovery. The designations of "CONFIDENTIAL MATERIAL"
 14 or "CONFIDENTIAL" by a Party constitutes the representation of the Party that it reasonably
 15 and in good faith believes that the designated material constitutes or discloses one of the
 16 following:

- 17 a) Files of specific Amway and Quixtar "dispute resolution"
 18 cases including formal and informal conciliation and arbitration;
- 19 b) Sensitive personal, business or commercial information
 20 that is not publicly available;
- 21 c) Information received by a Party from a third party subject
 22 to a protective order or under a bona fide obligation of confidentiality;
 23 and
- 24 d) Trade secrets, know-how, proprietary data or commercial
 25 information (including, but not limited to, customer and supplier lists,
 26 and pricing information) within the meaning of Rule 26(c)(1)(G) that has
 27 previously been maintained in confidence, or, if newly created, will be
 28 maintained in confidence.

25 Documents and things produced without a legend designating the material confidential
 26 shall not be Confidential Material subject to this Protective Order unless agreed by all Parties
 27 or ordered by this Court, or otherwise designated confidential in accordance with the provisions
 28 of Paragraph A of this Protective Order. Confidential Material does not include information,

1 documents, or things obtained in this action that are (a) in the receiving party's possession or
2 (b) publicly available. Furthermore, the disclosing party may designate as "Attorneys' Eyes
3 Only" (hereinafter "Attorneys' Eyes Only") information believed in good faith to contain or
4 constitute any of the following types of non-public information:

5 a. Strategic plans and internal and external analyses of pricing or sales
6 performance of any party or any affiliate of a party; or
7 b. Financial data, records, and reports, and tax returns of any party; or
8 c. Line of Sponsorship compilations or lists, in whole or in part, except the
9 identities of witnesses expected to testify or identities already known to the receiving party;

10 The parties agree that the following limitations shall be imposed on the disclosure of
11 Confidential Material and/or Attorneys' Eyes Only Information.

12 B. Confidential Material and/or Attorneys' Eyes Only Information received by any
13 person or party entitled under the terms of this Order to access such Confidential Material
14 and/or Attorneys' Eyes Only Information shall not be disclosed and shall not be used for any
15 purpose other than prosecution or defense of this action; provided further that specified
16 categories of Confidential Material and/or Attorneys' Eyes Only Information may be used in
17 the following related arbitration or litigation proceedings provided that a confidentiality order
18 substantially similar to this one applies:

19 • *Quixtar v. Woodward et al.*, JAMS No. 1100052219.
20 • *Quixtar v. Orrin Woodward et al.*, No. 07-084313-CK (Kent County, Michigan
21 State Court).

22 In the event any information subject to this Order is included with, or the contents
23 thereof; are in any way disclosed in any pleading, motion, deposition, transcript, or other paper
24 filed with a court of law, such Confidential Material and/or Attorneys' Eyes Only Information
25 shall be filed under seal in accordance with the local rules of the court.

26 C. Nothing contained in this Order shall be construed to affect or govern the scope
27 of discovery and/or the admissibility of evidence in this action, or to preclude any party from
28

1 moving the Court for a further order defining the scope of discovery available in the action
 2 and/or the admissibility of evidence in this action.

3 D. Nothing contained in this Order shall be construed to require production or
 4 disclosure of any Confidential Material and/or Attorneys' Eyes Only Information deemed by
 5 counsel for the party possessing such material to be protected from disclosure by either the
 6 attorney-client or the attorney-work product privileges, so long as the withheld materials are
 7 adequately identified and described by the party asserting the privilege(s).

8 E. The inadvertent production of privileged or work product documents will not
 9 waive the privilege or work product protection. Upon notice by the disclosing party and upon a
 10 showing of privilege, together with a showing of inadvertent production, the non-producing
 11 party shall immediately return the originals and all copies of the privileged documents or
 12 things, unless the non-producing party disputes the producing party's showing of privilege or
 13 inadvertent production. If the non-producing party disputes the producing party's showing, the
 14 non-producing party may retain one copy of the documents or things, pending hearing. Within
 15 10 days after receipt of the producing party's notice, the non-producing party that disputes the
 16 showing of privilege must file a motion with the Court to compel production of the documents
 17 or things. The producing party shall have the burden of showing privilege and inadvertence.
 18 From receipt of the producing party's notice, and until the Court resolves any such motion, the
 19 non producing party shall maintain the documents or things in a manner that they are available
 20 only to counsel, and to the exclusion of the parties.

21 **II. TERMS OF PROHIBITION:**

22 F. Confidential Material shall be revealed only to (1) the Court; (2) officers,
 23 directors, and employees of a party in this litigation; (3) counsel for the parties in this action
 24 and designated in house counsel who have signed this Order;¹ (4) such counsel's paralegal,
 25 secretarial and clerical staff (including shorthand reporters) assisting such counsel, and
 26 computer technicians, (5) testifying experts or non-testifying consultants who are retained by

27 ¹ The Confidential Material or Attorneys' Eyes Only Information shall not be disclosed to or discussed with any
 28 Shughart Thompson lawyer or employee who is working on the *Nitro Distributing et al. v. Alticor et al.* federal
 lawsuit, the related state court lawsuits, or the arbitrations and lawsuits involving Ken Stewart, Brig and Lita Hart
 or their Quixtar distributorships (collectively "the Nitro litigation").

1 such counsel to assist in this arbitration; and (6) employees of CNA Insurance and/or CNA
2 Insurance's designated outside legal counsel who have the responsibility to review the billing
3 and work product of TEAM's assigned trial counsel; and (7) any witness who testifies in a
4 deposition or at the hearing; provided that the witness may only see Confidential Material
5 directly pertinent to the witness' testimony. However, absent written agreement from the party
6 producing the Confidential Material or order from the Court, no party receiving Confidential
7 Material from another party may disclose the Confidential Material to any expert witness or
8 consultant or CNA Insurance's outside legal counsel who is employed by, or affiliated with, a
9 competitor of the producing party, including (for purposes of this protective order only) any
10 other direct sales program using a multilevel or "network" marketing structure or any other
11 enterprise that markets, through independent distributors, products or services functionally
12 interchangeable with those offered or marketed by Quixtar or TEAM, unless the party seeking
13 to disclose gives the owner of the Confidential Material ten days' written notice identifying the
14 Confidential Material to be disclosed and a general description of the competitor by which the
15 expert witness is employed or affiliated. "Affiliated" means that the expert witness has
16 substantial ongoing managerial responsibilities for the competitor, or direct or indirect control
17 of the competitor. A competitor's outside accounting firms and auditors, law firms,
18 construction general contractors, etc. are not "affiliated" within the meaning of this paragraph.

19 G. A document designated as Attorneys' Eyes Only Information and stamped
20 "Attorneys" Eyes Only" and the information contained therein shall be revealed only to (1) the
21 Court; (2) counsel representing the parties in this action and designated in house counsel who
22 have signed this Order; (3) such counsel's paralegal, secretarial and clerical staff (including
23 shorthand reporters) assisting such counsel and computer technicians; (4) employees of CNA
24 Insurance and/or CNA Insurance's designated outside legal counsel who have responsibility to
25 review the billing and work product of TEAM's assigned trial counsel; (5) expert witnesses and
26 non-testifying consultants who are retained by such counsel (and excluding any expert witness
27 or consultant or CNA Insurance's outside legal counsel who is employed by, or affiliated with,
28 a competitor of the producing party); and (6) a witness who testifies in a deposition or at the

1 hearing, provided that the witness may only see "Attorney's Eyes Only" information directly
 2 pertinent to the witness' testimony, and may not make any copies or notes. "Competitor" and
 3 "Affiliated" mean the same as they do in Paragraph G above. A party may challenge an
 4 "Attorneys' Eyes Only" designation, and if the designating party does not withdraw the
 5 designation within 3 days, the parties will seek a ruling from the Court at the Court's earliest
 6 convenience. The prevailing party in such a challenge shall be entitled to attorneys' fees to the
 7 extent the Court believes such fee-shifting is appropriate in the particular situation. If the Court
 8 sustains the challenge, the document or information will not be treated as "Attorneys' Eyes
 9 Only."

10 H. With the exception of: (1) the Court; (2) counsel representing the parties in this
 11 action and designated in house counsel; and/or (3) paralegals or secretarial employees under the
 12 direct supervision of such counsel, each person who reviews or inspects Confidential Material
 13 and/or Attorneys' Eyes Only Information shall sign a copy of the attached Affidavit. Each
 14 person's signature shall be notarized by an officer authorized to administer oaths. No person
 15 entitled to access to Confidential Material and/or Attorneys' Eyes Only Information shall
 16 disclose or discuss the existence or contents of any such materials with any other individual, or
 17 entity, except those individuals who are also permitted by this Order to view, inspect, or receive
 18 the Confidential Material and/or Attorneys' Eyes Only Information.

19 I. Counsel for the parties shall maintain a list of all persons (with the exception of:
 20 (1) the Court; (2) counsel representing the parties in this action and designated in house counsel
 21 who have signed this Order; and (3) paralegals or secretarial employees under the direct
 22 supervision of such counsel) who inspect or review Confidential Material or who receive any
 23 copies or any version of Confidential Material and will make such a list available to counsel for
 24 the other parties within thirty (30) days of the conclusion of this action or any post-action
 25 proceeding in a court of law, if any. The parties and their counsel shall also certify to the Court
 26 their compliance with this Order at the conclusion of this action.

27 J. If Confidential Material and/or Attorneys' Eyes Only Information is disclosed to
 28 or comes into the possession of any person other than in the manner authorized by this Order,

1 any party becoming aware of such disclosure shall immediately inform the party which
 2 originally produced the Confidential Material and/or Attorneys' Eyes Only Information of all
 3 pertinent facts relating to the unauthorized disclosure and shall instruct each unauthorized
 4 person to treat such information as confidential in accordance with the terms of the Order and
 5 demand that it be returned immediately.

6 K. If a party receives a subpoena or other legal process which calls for disclosure of
 7 any materials designated as Confidential Material and/or Attorneys' Eyes Only Information by
 8 another party, or for disclosure of any information contained in such Confidential Material
 9 and/or Attorneys' Eyes Only Information, the party receiving the subpoena shall give prompt
 10 written notice, by fax and first-class mail, of such subpoena or other legal process to counsel
 11 for the party who designated the Confidential Material and/or Attorneys' Eyes Only
 12 Information in question, and shall cooperate in any reasonable and legally appropriate efforts to
 13 oppose or otherwise limit production or disclosure of such Confidential Material and/or
 14 Attorneys' Eyes Only Information in response to the subpoena or legal process.

15 **III. RETURN OF DOCUMENTS AND INFORMATION:**

16 L. At the conclusion of this action, or, if Confidential Material or Attorneys' Eyes
 17 Only Information is being used in a related arbitration or litigation (as provided in paragraph B)
 18 at the conclusion of that other arbitration or litigation, all documents and materials subject to
 19 this Order, (including all copies, abstracts, summaries thereof; and all documents which refer
 20 to, recount, or depict Confidential Material and/or Attorneys' Eyes Only Information), shall be
 21 destroyed or returned to counsel for the producing party within thirty (30) days, accompanied
 22 by an affidavit with an affirmation certifying that all material has been destroyed or returned
 23 and protected in accordance with this Order.

24 **IV. APPLICATION TO THE COURT FOR FURTHER RELIEF:**

25 M. Nothing herein shall be construed to preclude or limit any party from opposing
 26 any discovery on any grounds which would otherwise be available. Nothing in this Order shall
 27 be deemed to preclude any party from seeking or obtaining, on the appropriate showing,
 28 additional protection with respect to the confidentiality of documents or information.

1 **V. ADMISSION INTO EVIDENCE:**

2 N. The terms of this Order shall not be construed as a limitation upon the right of
3 any party to offer into evidence in this action any documents or information covered by this
4 Order. Production of the documents or information accompanied by this Order does not
5 constitute a waiver to objection to admissibility.

6 **VI. MODIFICATION**

7 O. This Protective Order may not be modified except in writing signed by all
8 parties and approved by the Court.

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10 IT IS SO ORDERED

11 DATED this 28th day of July, 2009



12 Hon. Robert A. McQuaid, Jr.
13 Magistrate Judge, District of Nevada

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1 EXHIBIT A
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5 UNITED STATES DISTRICT COURT
6 DISTRICT OF NEVADA
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8

9 QUIXTAR INC.,
10 v.
11 Plaintiff,
12
13 SIGNATURE MANAGEMENT TEAM, LLC
14 d/b/a TEAM,
15 v.
16 Defendant.
17
18

Case No. 3:07-cv-00505

**UNDERTAKING OF
PROTECTIVE ORDER** ^{RE}

14 I, being duly sworn, state that:

15 1. My present address is _____
16 My present employer is _____,
17 and the address of my present employer is _____.

18 2. I have received a copy of the Protective Order in this action. I have carefully
19 read and understand the provisions of the Protective Order.

20 3. I will comply with all of the provisions of the Protective Order. I will hold in
21 confidence, will not disclose to anyone not qualified under the Protective Order, and will use
22 only for purposes of the above entitled action, any CONFIDENTIAL INFORMATION,
23 including the substance and any copy, summary, abstract, excerpt, index or description of such
24 material that is disclosed to me.

25 4. I will return all CONFIDENTIAL INFORMATION that comes into my
26 possession, and all documents and things that I have prepared relating thereto, to counsel for
27 the Party by whom I am employed or retained or from whom I received such material when
28 requested to do so.

1 5. I understand that if I violate the provisions of the Protective Order, I will be
2 subject to sanctions by the Court, and that the producing party may assert other remedies
3 against me. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of
4 the Protective Order in this action.

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8 Sworn to and subscribed before me
this ____ day of _____, 20____

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10 _____
Notary Public

11 My commission expires _____

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